

PT 97-6
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

FIRST PRESBYTERIAN)	
CHURCH of DIXON, owner,)	
APPLICANT)	DOCKET: 92-52-54
(Eurith Leydig)	
Memorial Center, Lessee))	
)	
v.)	P.I.N.: 07-08-05-260-008
)	
)	
STATE OF ILLINOIS,)	Alan I. Marcus,
DEPARTMENT of REVENUE)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Charles T. Beckman of Ehrmann, Gelbach, Beckman, Badger & Lee appeared on behalf of The Eurith Leydig Memorial Center.

SYNOPSIS:

This proceeding raises the issues of whether that portion of the subject property commonly known as The Eurith Leydig Memorial Center (hereinafter the "ELMC") qualifies for exemption from 1992 real estate taxes under Ill. Rev. Stat. Ch. 120, pars. 500.2 and 500.7.¹

¹. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1992 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939, Ill. Rev. Stat. ch. 120, par. 482 *et seq.*

In relevant part, the former exempts from real estate taxation "[a]ll property used exclusively for religious purposes ..[.]"

Under relevant portions of the latter provision, "[a]ll property of institutions of public charity, all property of beneficent and charitable organizations ... when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit ..." are exempt from real estate taxation. Section 500.7 also contains the following language:

For purposes of this Section, beginning with assessment year 1989, it is a charitable or beneficent purpose and not a use with a view to profit when (1) the owner, and no other person, uses the property exclusively for the distribution, sale or resale of donated goods and related activities and (2) all the income derived therefrom is used exclusively to support the charitable, religious or beneficent activities of the owner whether or not such activities occur on the premises of such property.

Ill. Rev. Stat. ch. 120, par. 500.7.

The controversy arises as follows:

On June 5, 1992, the First Presbyterian Church of Dixon, Illinois, (hereinafter the "Church" or the "applicant"), filed a real estate exemption complaint with the Lee County Board of Review, (hereinafter the "Board"). Said complaint alleged that Permanent Index Numbers 07-08-05-238-013 and 07-08-05-026-008 were exempt from real estate taxation under Ill. Rev. Stat. ch. 120, pars. 500.2 and 500.7. Thereafter, the Board recommended to the Department of Revenue, (hereinafter the "Department") that the requested exemptions be approved.

On December 10, 1992, the Department approved this recommendation in part by issuing a certificate exempting parcel number 07-08-05-238-013 in its entirety. The certificate also exempted those portions of parcel number 07-08-05-260-008 that did not fall within the ELMC property.

Applicant filed a timely request for hearing as to the ELMC property on December 23, 1992. After a pre-trial conference, an evidentiary hearing was conducted July 1, 1996. Following submission of all evidence and a careful review of the record, it is recommended that

the ELMC property not be exempt from real estate tax for the 1992 assessment year.

FINDINGS OF FACT:²

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 3.

2. The ELMC is located on the southerly 50 feet of lot 4, block 63 in the original town of Dixon, Illinois. Dept. Ex. No. 2. It is identified by Permanent Index Number 07-08-05-260-008. Dept. Ex. Nos. 1 and 2.

3. Applicant assumed ownership of the ELMC property (hereinafter the "property") via a warrantee deed dated May 10, 1971. Tr. p.13; Applicant Ex. No. 1.

4. The property is improved with a split level building. Floor plans disclose that dimensions of both levels (35' x 95') are identical. Applicant Ex. No. 5.

5. The first level contains second-hand clothing of all types and sizes. The second contains various kinds of second-hand furniture. *Id.*

6. During 1992, ELMC operated a store which offered these items for sale. The store was located on the demised premises and

². In order to facilitate better organization and promote greater clarity, I have divided the Findings of Fact into the following categories: Preliminary Considerations and Description of the Subject Property (Findings 1 through 8); Applicant's Organizational Structure (Findings 9 through 11); Applicant's Financial Structure (Findings 12 through 15) and Applicant's Operations and Use of the Subject Parcel (Findings 16 through 26).

was open Mondays, Thursdays and Saturdays from 10:00 am until 4:00 pm. Tr. pp. 15, 17-18.

7. On March 1, 1972, the Church entered into a lease whereby it demised the property to ELMC in exchange for a one-time payment of \$1.00. This lease (which was in full force and effect throughout the 1992 assessment year), specifically provides that ELMC pays no rent to the Church. It its, however, required to maintain the building and pay \$30.00 per month into a repair escrow account. Tr. pp. 14, 35-36; Applicant Ex. No 4.

8. Withdrawals are made from the escrow account only when it becomes necessary to make appropriate repairs. Such withdrawals are strictly limited to the cost of any repairs made except that any funds left in escrow at the termination of the lease become property of the lessee. *Id.*

B. ELMC's Organizational Structure

9. The ELMC was incorporated under the Illinois General Not For Profit Corporation Act on September 15, 1970. Its work is dedicated to the memory of Eurith Leydig, a philanthropist who lived in Dixon, Illinois. Applicant Ex. Nos. 2 and 3.

10. ELMC's specific corporate purposes are to:

A. Service the disadvantaged people of Dixon and surrounding area;

B. Seek funds for the operation of said center;

C. Work in cooperation with the Lee County Welfare Association, Fish, Salvation Army, Good Fellows, County Supervisor Burrs [sic] and others in welfare work;

D. Seek voluntary workers to service said Center, through local churches, etc;

E. Work with the police and fire departments of Lee County community in helping victims of fire and other disasters;

F. Assist vagrants in encouraging them to help themselves and to attend church;

Id.

11. A ten-member Board of Directors is responsible for managing ELMC's daily business affairs. This board is to meet not less than once per year. It may also hold such special meetings as may be called by any board member or the corporate president. Applicant Ex. No. 3.

C. ELMC's Financial Structure

12. ELMC's corporation has no capital stock or shareholders. Tr. pp. 33, 34. During 1992, ELMC derived the totality of its gross income, which amounted to \$22,196.00, from sales of second hand clothing and furniture. Tr. pp. 16, 32, 43; Applicant Ex. No. 7.

13. Operating expenses for the above period amounted to \$5,442.86. Said were apportioned as follows:

A. Telephone	\$ 252.76
B. Commonwealth Edison	\$ 764.88
C. Garbage & Refuse Collection	\$ 2,090.00
D. Gas	\$ 1,225.70
E. Insurance	\$ 504.00
F. Water	\$ 46.26
G. Miscellaneous Supplies	\$ 166.17
H. Building Maintenance	\$ 393.09
L. Total expenses	\$ 5,442.86 ³

³. The above numbers lead me to conclude that applicant's 1991 operating expenses were apportioned according to the following percentages: 4.6% to Telephone; 14% to Commonwealth Edison; 38.4% to Garbage & Refuse Collection; 22.5% to Gas; 9.5 to Insurance; less than 1% to Water; 3% to Miscellaneous Supplies and 7.2% to Building Maintenance.

Applicant Ex. No. 7.

14. ELMC also made donations to following organizations during 1992:⁴ Meals on Wheels (\$1,156.60); Hospice (2,700.00); Local Paramedics (\$1,000.00); Red Cross (\$200.00); CASA (\$2,000.00); Medi-Mate (500.00); Say No To Drugs (\$500.00); Al Morrison Youth Baseball (\$700.00); Kreider (\$700.00); Lutheran Social Services (\$700.00); United Way (\$700.00); Campus Life (\$1,000.00); PADS (\$1,000.00); Salvation Army (\$1,000.00); Emergency Needs (\$1,000.00) and DARE (\$500.00). *Id*; Tr. pp. 20-25.

15. The above donations amount to \$15,356.60. When added to the above operating expenses, the donations increase ELMC's total expenses for 1992 to \$20,799.46. They also constitute approximately 74% of such expenses. *Id*.

⁴. The amount of each donation is shown in parentheses.

D. ELMC's Operations and Use of the Demised Premises During 1992

16. ELMC services an area which extends from its immediate community into Rockford. Tr. p. 45. It holds a Certificate of Registration, issued by the Department of Revenue, to sell tangible personal property at retail. Its registration number (which does not exempt it from paying use and related taxes) is 276-454-7. Tr. pp. 15-16; Applicant Ex. No. 6.

17. Pursuant to its Certificate of Registration, ELMC operates a store on the demised premises. This store, which sells used clothing and furniture, is open Mondays, Thursdays and Saturdays from 10:00 am until 4:00 pm. Tr. pp. 17-18, 39.

18. The store has no paid employees except one man who shovels snow. The remaining staff consists of volunteers from local churches and persons required to perform community service by the Lee County Probation Department. Tr. pp. 18, 31, 40.

19. ELMC does not pay for any of the merchandise it resells. It obtains all such material from donations. Tr. pp. 25, 27.

20. In many (exact number unspecified) cases, ELMC gave merchandise away strictly on the basis of need. Its giveaways often consisted of a grocery bag that included shoes, coats and other needed items. Tr. pp. 38-39.

21. Many of those who purchase merchandise at the store are referred to ELMC by the Red Cross or local churches. Tr. pp. 27-28.

22. ELMC also distributes food to needy families in Lee County. This program was sponsored by the Salvation Army and benefitted nearly 200 families during the 1992 tax year. Tr. pp. 28-30.

23. During the Christmas holiday season, ELMC also collects and distributes food baskets and toys to needy persons throughout the community. It undertakes this project in conjunction with Good Fellows, a local service organization. Tr. pp. 30-31.

24. ELMC also provided the Illinois Department of Corrections with books to start a library at an unspecified facility. Tr. p. 32.

25. Any person applying for ELMC services is required to fill out an application. Among other things, this form requested information about the person's marital and employment status. It also contained space for a statement of needs and three non-family references. Applicant Ex. No. 8.

26. ELMC uses the application strictly for record-keeping purposes. Although it investigated each person who filled out an application, it did not refuse to provide services to anyone who applied. Tr. p. 33.

CONCLUSIONS OF LAW:

On examination of the record established this taxpayer has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exemption from 1992 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject parcel does not

satisfy the requirements for exemption set forth in Ill. Rev. Stat. ch. 120, par. 500.7 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, Ill. Rev. Stat. ch. 120, par. 482 et seq. The provisions of that statute that govern disposition of

the instant proceeding are found in Section 500.7. In relevant part, that provision exempts from real estate taxes "[a]ll property of institutions of public charity, all property of beneficent and charitable organizations ... when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit ...[.] It also states as follows:

For purposes of this Section, beginning with assessment year 1989, it is a charitable or beneficent purpose and not a use with a view to profit when (1) *the owner, and no other person, uses the property exclusively for the distribution, sale or resale of donated goods and related activities* and (2) all the income derived therefrom is used exclusively to support the charitable, religious or beneficent activities of the owner whether or not such activities occur on the premises of such property.

Ill. Rev. Stat. ch. 120, par. 500.7. (Emphasis added).

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

The instant record establishes that the applicant Church, as opposed to the ELMC itself, owns the subject property. Said record further establishes that applicant does not use the property. Rather, it leases the premises to ELMC, which operates a thrift shop thereon.

The emphasized portion of Section 500.7 clearly requires that exemption be denied unless "the owner *and no other person*" uses the subject premises for appropriate purposes. Furthermore, Illinois courts have long held that "[i]f real estate is leased for rent, whether in cash or other form of consideration, it is used for profit." People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924), (hereinafter "Baldwin"); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988). Thus, "[w]hile the application of income to charitable purposes aids the charity, the primary use of [the parcel in question] is for [non-exempt] profit." *Id.*

Here, the ELMC holds a leasehold interest in the subject premises. As such, it does not satisfy the legislatively-imposed ownership requirement contained in Section 500.7. Moreover, Findings of Fact 6, 7, 12, 16 and 17 clearly establish that the subject premises was leased and primarily operated for profit-making purposes during the 1991 tax year. Accordingly, the Baldwin and Salvation Army holdings mandate that the property was not in exempt use during that time. Therefore, I conclude that the property does not satisfy the statutory and common law elements for charitable exemption from 1991 real estate taxes.

Applicant also seeks exemption under Section 500.2 of the Revenue Act. This provision, by its plain language, exempts from real estate "[a]ll property used exclusively for religious purposes ... [.]" (emphasis added).

When analyzing applicant's entitlement to exemption under Section 500.2, I am bound to recognize that prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment (which the emphasized

language demonstrates is still in effect) eliminated that requirement. The test of exemption became use and not ownership. People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922). See also, American National Bank and Trust Company v. Department of Revenue, 242 Ill.App.3d 716 (2nd Dist. 1993). For this reason, the property cannot be denied exemption under Section 500.2 merely because the owner and the user are separate legal entities. Therefore, it is necessary to examine the definition of religious use in order to determine whether that exemption applies.

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911), the Illinois Supreme Court considered whether appellee's real estate qualified for religious and educational exemptions from property taxes under amendments to the Revenue Act that became effective July 1, 1909. While the court's analysis of the educational exemption has limited relevance to this proceeding, its definition of the term "religious purpose" provides the basic framework for analyzing taxpayer's claim under Section 500.2.

The court began its analysis by noting that "[w]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations." McCullough, *supra* at 136.

Cases decided after McCullough have acknowledged that religious beliefs are not necessarily limited to those which profess an orthodox belief in God. See, United States v. Seeger, 380 U.S. 163

(1965). However, the following definition of "religious purpose" contained in McCullough, emphasizes a more traditional approach:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction. McCullough at 136-137.

Here, the legislature has expressly declared (through enactment of the thrift shop provisions contained in Section 500.7) that where appropriate, properties used in the same manner as the ELMC be exempted under the charitable, rather than religious use provisions of the Revenue Act. However, the preceding analysis has demonstrated that exemption of the ELMC under that provision is not appropriate under the facts of this case. Consequently, the ELMC does not qualify for exemption under Section 500.2 based on its use.

I would nevertheless note that the ELMC would not qualify for a religious use exemption even if the General Assembly had not enacted the thrift shop provisions. The instant record fails to disclose that the subject property was used primarily for purposes which qualify as exclusively religious within the meanings of McCullough and Seeger during 1992. Rather, Findings of Fact 16 and 17 (*supra* p. 6) clearly establish that it was primarily used for conducting commercial retail sales, albeit at reduced prices, in that assessment year. For this and all the aforementioned reasons, I recommend that the Department's decision denying the ELMC property exemption from 1992 real estate taxes be affirmed.

WHEREFORE, for all the above-stated reasons, the ELMC center should not be exempt from 1992 real estate tax.

Date

Alan I. Marcus,
Administrative Law Judge